

(3) A statement of the reasons why the bank deems omission to be proper in the particular case; and

(4) Where such reasons are based on matters of law, a supporting opinion of counsel. The bank shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the bank deems the omission of the proposal to be proper and a copy of the supporting opinion of counsel.

(e) If the bank intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall—not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed under § 335.204, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal—promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 335.206 and the proponent wishes to bring this matter to the attention of the FDIC, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the bank with a copy of such letter.

§ 335.212 Form for proxy statement (Form F-5).

FORM F-5—Proxy Statement

GENERAL INSTRUCTIONS

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in § 335.102.

This form is not to be used as a blank form to be filled in nor is it intended to prescribe a form for presentation of material in the statement. Its purpose is solely to prescribe the information required to be set forth in the statement; any additional information that the bank or the soliciting persons deem appropriate may be included.

Except as otherwise specifically provided, where any item calls for information for a

specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Note to Small Business Issuers: a “small business issuer”, as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the disclosure requirements set forth in this section by Item 4, paragraph (b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d); Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of “small business issuer”, generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

INFORMATION REQUIRED IN STATEMENT

Item 1—Revocability of Proxy.

State whether the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised, is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2—Dissenters' Rights of Appraisal.

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to those matters.

Item 3—Persons Making the Solicitation.

(a) Solicitations not subject to § 335.220.

(1) If the solicitation is made by the bank, so state. Give the name of any director of the bank who has informed the bank in writing that he intends to oppose any action intended to be taken by the bank and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the participants in the solicitation, as defined in paragraphs (a)(iii), (iv), (v) and (vi) of Instruction 3 to this item.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state: (i) The material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to § 335.220.

(1) State by whom the solicitation is made and describe the methods employed and to be employed.

(2) If regular employees of the bank or any other participants in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives, or other persons have been or are to be employed to solicit security holders, state: (i) The material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the bank, state whether reimbursement will be sought from the bank, and if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instructions. 1. With respect to solicitations subject to § 335.220, costs and expenditures within the meaning of this item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, ad-

vertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required under paragraph (6) of item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

3. For purposes of this Item 3 and Item 4 of this Form F-5:

(a) The terms *participant* and *participant in a solicitation* include the following:

(i) The bank;

(ii) Any director of the bank, and any nominee for whose election as a director proxies are solicited;

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants;

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the bank by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

(b) The terms *participant* and *participant in a solicitation* do not include:

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) Any person employed by a participant in the capacity of attorney, accountant, or advertiser, public relations or financial adviser, and whose activities are limited to the

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duties required to be performed in the course of such employment;

(iv) Any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or

(v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

Item 4—Interest of Certain Persons in Matters To Be Acted Upon.

(a) Solicitations not subject to § 335.220. Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the bank each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the bank, each participant in the solicitation, as defined in paragraphs (a)(iii), (iv), (v), and (vi) of Instruction 3 to Item 3 of this Form F-5.

(3) Each nominee for election as a director of the bank.

(4) Each associate of the foregoing persons.

Instruction. Except in the case of a solicitation subject to subpart B made in opposition to another solicitation subject to subpart B, this subitem (a) shall not apply to any interest arising from the ownership of securities of the bank where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Solicitations subject to § 335.220.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in paragraphs (a)(ii), (iii), (iv), (v) and (vi) of Instruction 3 to Item 3 of this Form F-5, in any matter to be acted upon at the meeting, and include with respect to each participant the following information, or a fair and accurate summary thereof:

(i) Name and business address of the participant.

(ii) The participant's present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(iii) State whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer need not be included in the proxy statement or other soliciting material.

(iv) State the amount of each class of securities of the bank which the participant owns beneficially, directly or indirectly.

(v) State the amount of each class of securities of the bank which the participant owns of record but not beneficially.

(vi) State with respect to all securities of the bank purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date.

(vii) If any part of the purchase price or market value of any of the shares specified in paragraph (b)(1)(vi) of this item is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the bank, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

(ix) State the amount of securities of the bank owned beneficially, directly or indirectly, by each of the participant's associates and the name and address of each such associate.

(x) State the amount of each class of securities of any parent or subsidiary of the bank which the participant owns beneficially, directly or indirectly.

(xi) Furnish for the participant and associates of the participant the information required by § 335.212, Item 7(c).

(xii) State whether or not the participant or any associates of the participant have any arrangement or understanding with any person—

(A) With respect to any future employment by the bank or its affiliates; or

(B) With respect to any future transactions to which the bank or any of its affiliates will or may be a party. If so, describe such arrangement or understanding and state the names of the parties thereto.

(2) With respect to any person, other than a director or executive officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any

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substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1) (xi) and (xii) of this item.

Instruction: For purposes of this Item 4, beneficial ownership shall be determined in accordance with §335.403.

Item 5—Voting Securities and Principal Holders Thereof.

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the date as of which the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons

solicited have cumulative voting rights: (1) Make a statement that they have these rights, (2) briefly describe these rights, (3) state briefly the conditions precedent to their exercise, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in §335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in 17 CFR 229.402(a)(3), and direc-

tors and executive officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have a right to acquire beneficial ownership as specified in §335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a

description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source or any part of the

consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of the bank shall be omitted provided a request for confidentiality has been made under section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the FDIC.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters shall be described.

(f) Describe any arrangements, known to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purpose of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph

(2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragraph (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Directors and Principal Officers.

If action is to be taken with respect to election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank the information required need to be furnished only as to nominees of the persons making the solicitation.

(a) *Identification of directors.* List the names and ages of all directors of the bank, and all persons nominated or chosen to become directors; indicate all positions and offices with the bank held by each such person; state the term of office as director and any period(s) during which the person has served as such; briefly describe any arrangement or understanding between the person and any other person or persons (naming such person(s)) pursuant to which the person was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as one should be named in response to this item. In this regard, see § 335.207.

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or under the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

(b) *Family relationships.* State the nature of any family relationship between any director, principal officer, or person nominated or chosen by the bank to become a director or principal officer.

Instruction. The term *family relationship* means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director or person nominated or chosen to become a director; including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered under section 12 of the Act.

(d) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director or person nominated to become a director of the bank:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of the person, or any partnership in which the person was a general partner at or within two years before the time of filing, or any corporation or business association of which the person was a principal officer at or within two years before the time of the filing;

(2) The person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) The person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining the person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any type of activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws;

(4) The person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or

otherwise limiting for more than 60 days the right of the person to engage in any activity described in paragraph (d)(3) of this item, or to be associated with persons engaged in any such activity;

(5) The person was found by a court of competent jurisdiction in a civil action or by a government authority to have violated any Federal or State securities law, and the judgment in the civil action or finding by the government authority has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the five-year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (d) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the FDIC, at the time preliminary materials are filed under § 335.204 as supplemental information and not as part of the proxy statement materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated

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gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (e) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

NOTE: In the FDIC's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to this item 6(e), characterization of a director or nominee by any "label" connoting a lack of relationship to the bank and its management may be materially misleading.

(f) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each committee during the

last fiscal year and describe briefly the functions performed by such committees.

(2) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director attendance.* State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of: (1) The total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(h) *Director resignations.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

Item 7—Compensation and Other Transactions With Management and Others.

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Compensation of directors and executive officers.* Furnish the information required by the applicable and currently effective SEC regulations contained in Item 8 of SEC Schedule 14A (17 CFR 240.14a-101, Item 8).

(b) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to

the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or \$5 million, whichever is less.

NOTE: For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year:

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(c) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under General Instructions to Paragraphs (a) through (e) of item 7.

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges

fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and,

if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(d) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

Item 8—Relationship With Independent Public Accountants.

If the solicitation is made on behalf of management of the bank and relates to a meeting of security holders at which directors are to be elected, auditors are to be selected or approved, or financial statements are included pursuant to item 13, furnish the following information describing the bank's

relationship with its independent public accountants:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of shareholders, and if in connection with such change(s) a disagreement between the accountant and bank has been reported on Form F-3 or in the accountant's letter filed as an exhibit thereto, the disagreement shall be described. Prior to submitting the preliminary proxy material to the FDIC which contains or amends such description, the bank shall furnish the description of the disagreement to any accountant with whom a disagreement has been reported. If that accountant believes that the description of the disagreement is incorrect or incomplete, he may include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. This statement shall be submitted to the bank within 10 business days of the date the accountant received the bank's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

Item 9—Compensation Plans.

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.*

(1) Describe briefly the material features of the plan being acted upon, identify each

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class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

PLAN NAME

Name and position	Dollar value (\$)	No. of units
CEO
A
B
C
D
Executive Group
Non-Executive Director Group
Non-Executive Officer Employee Group

Instruction to New Plan Benefits Table

Additional columns should be added for each plan with respect to which security holder action is to be taken.

(ii) The table required by paragraph (a)(2)(i) of this item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this item:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item,

state the nature of the amendments which can be so made.

(b) *Additional information regarding specified plans subject to security holder action.*

(1) With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this item may be furnished in the format specified by 17 CFR 229.402(f)(1).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions to Item 9.

1. The term *plan* as used in this item means any plan as defined in 17 CFR 229.402(a)(7)(ii).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered

with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time copies of the proxy statement and form of proxy are first filed pursuant to § 335.204(a).

4. Paragraph (b)(2)(ii) of this item does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

Item 10—Authorization or Issuance of Securities Otherwise than for Exchange.

If action is to be taken with respect to the authorization or issuance of any securities otherwise than in exchange for outstanding securities of the bank, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the material provisions of the securities such as would be required in a registration statement filed pursuant to this part. If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to: (1) The nature and approximate amount of consideration received or to be received by the bank, and (2) the approximate amount devoted to each purpose so far as determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general ef-

fect thereof upon the rights of existing security holders.

Item 11—Modification or Exchange of Securities.

If action is to be taken with respect to the modification of any class of securities of the bank, or the issuance or authorization for issuance of securities of the bank in exchange for outstanding securities of the bank, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor, and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in a registration statement filed under to this part.

(c) State the reasons for the proposed modification or exchange, and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether it is intended to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If it is not intended to make such application, state the effect of the termination of such listing and registration.

Item 12—Mergers, Consolidations, Acquisitions and Similar Matters.

If action is to be taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

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(a) *Information about the transaction.* Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 335.204. The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction;

(v) The federal income tax consequences of the transaction; and

(vi) The information required in the description of securities in a registration statement (Form F-1, Item 13) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S-3 and elects to furnish information required by Item 14(b)(1) of the SEC's Schedule 14A (17 CFR 240.14a-101); (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular

case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5)

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following information items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) and (a)(6)

For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respect to the transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E-3 (§ 240.13e-100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the

high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information required by Item 1 of Form F-2 (§ 335.312 of this part), description of business;

(2) Information required by Item 2 of Form F-2 (§ 335.312 of this part) description of property;

(3) Information required by Item 3 of Form F-2 (§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F-2 (§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholder matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F-2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F-2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F-2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Items 4, 5, 6, 7 and 8 of this Form F-5.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report: *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the

income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F-4 (§335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b)(4) and (6) through (8) of this Item 12 and the information required by items 4, 5, 6, 7 and 8 of this Form F-5.

(5) Schedule VI—Allowance for Possible Loan and Lease Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of §335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S-2 or S-3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a-101).

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons that is required by this item, other than information required by paragraphs (a) (1) through (3) and (a) (9) through (11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent

with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1) through (4) and (a) (8) through (11) of this Item, may be omitted.

Item 13—Financial Statements.

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted:

(1) All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

(d) The statement may incorporate by reference any financial statements contained in an annual report sent to security holders under § 335.203 with respect to the same meeting as that to which the statements relate, provided such financial statements substantially meet the requirements of this item.

Item 14—Action With Respect to Reports.

If action is to be taken with respect to any report of the bank or of its directors, officers, or committees or any minutes of meetings of its security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 15—Matters Not Required To Be Submitted.

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter by the security holders.

Item 16—Amendment of Charter; Bylaws; or Other Documents.

If action is to be taken with respect to any amendment of the bank's charter, bylaws, or other documents as to which information is not required above, state briefly the reasons for and general effect of such amendment.

Instruction. Where the matter to be acted upon is the classification of directors state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 17—Other Proposed Action.

If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by items 5 to 18, inclusive, above.

Item 18. Voting Procedures

As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as bank charter and by-law provisions.

Item 19—Acquisition or Disposition of Property.

If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 20—Restatement of Accounts.

If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the bank, furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 21—Compliance with Section 16(a) of the Exchange Act.

Every bank having a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78j) shall:

(a) Based solely upon a review of Forms F-7 (§ 335.420) and F-8 (§ 335.421) and amendments thereto furnished to the bank during its most recent fiscal year, and Forms F-8A (§ 335.422) and amendments thereto furnished to the bank with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this item:

(i) Identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than 10 percent of any class of equity securities of a bank registered pursuant to section 12 of the Exchange Act, ("reporting person") that failed

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to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form.

Note: The disclosure requirement is based on a review of the forms submitted to the bank during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form F-8 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the bank should disclose that late filing and transaction pursuant to this item 21 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this item:

(i) A form received by the bank within three calendar days of the required filing date may be presumed to have been filed with the FDIC by the required filing date.

(2) If the bank: (i) Receives a written representation from the reporting person that no Form F-8A is required; and (ii) Maintains the representation for two years, making a copy available to the FDIC or its staff upon request, the bank need not identify such reporting person pursuant to paragraph (a) of this section as having failed to file a Form F-8A with respect to that fiscal year.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55556, Dec. 14, 1983; 54 FR 53576, Dec. 29, 1989; 57 FR 4702, Feb. 7, 1992; 57 FR 58136, Dec. 9, 1992; 59 FR 67171, Dec. 29, 1994]

§ 335.213 Form for information statement (Form F-5A).

FORM F-5A

INFORMATION STATEMENT

NOTE: Where any item, other than item 5, calls for information with respect to any matter to be acted upon at the meeting, such item need be answered only with respect to proposals to be made by the bank.

Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or re-

lationship provided a statement to that effect is made.

Small Business Issuers: A "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the following referenced disclosure requirements set forth in § 335.212 Item 4(b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d); Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

Item 1. Information required by items of Form F-5 (12 CFR 335.212). Furnish the information called for by all of the items of Form F-5 (12 CFR 335.212) (other than items 1, 3, and 4 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

Item 2. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold-face type:

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY

Item 3. Date, time and place of meeting. State the date, time and place of the meeting of security holders, unless that information is otherwise disclosed in material furnished to security holders with the information statement.

Item 4. Interest of certain persons in or opposition to matters to be acted upon. (a) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) Each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) Each nominee for election as a director of the bank.

(3) Each associate of the foregoing persons.

(b) Give the name of any director of the bank who has informed the bank in writing that he intends to oppose any action to be taken by the bank at the meeting and indicate the action which he intends to oppose.

Item 5. Proposals by security holders. If any security holder entitled to vote at the meeting has submitted to the bank a reasonable time before the information statement is to